

INITIAL STATEMENT OF REASONS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT DIVISION OF CODES AND STANDARDS (HCD)

TITLE 25, CALIFORNIA CODE OF REGULATIONS, CHAPTER 3, SUBCHAPTER 2 ARTICLE 2.3, SECTIONS 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4214 AND 4216

ON THE SUBJECT OF IGNITION RESISTANT CONSTRUCTION SYSTEMS FOR MANUFACTURED HOMES, MOBILEHOMES, MULTIFAMILY MANUFACTURED HOMES AND COMMERCIAL MODULARS INSTALLED WITHIN WILDLAND-URBAN INTERFACE AREAS

Subject Matter of Regulations

The Department of Housing and Community Development (HCD) proposes to permanently adopt the above-noted article 2.3 and regulation sections into CCR Title 25, Chapter 3, Subchapter 2, which were adopted by emergency effective September 1, 2008, through February 28, 2009, for 180 days as permitted by the Administrative Procedure Act. The regulations establish ignition resistant construction standards for specified manufactured residential and non-residential structures by adopting by reference construction standards in Title 24, CCR, Part 2, (California Building Code), Chapter 7A.

Background

On September 2, 2003, the California Legislature approved Assembly Bill 1216 (Fire Safety Regulations), and the Governor signed it as Chapter 688 of the Statutes of 2003. This measure was supported by fire fighters, insurance advocates, and environmental groups. The legislation became effective January 1, 2004, amending Section 13108.5 of the Health and Safety Code relating to building construction in Wildland-Urban Interface Fire Areas.

One month after the Governor signed AB 1216, California was under siege by the most devastating wildland fire disaster in the state's history. The facts surrounding the disaster included 24 people, including one fire fighter dying, 750,043 acres burned, and 3,710 homes destroyed. More recently, the Southern California wildfires in October 2007, resulted in 94 casualties, including 9 who died, and destroyed over 1,500 homes, including almost 220 manufactured homes in parks in high fire hazard areas. In the aftermath of the fires, the loss of stabilizing vegetation and torrential rain storms created horrendous mudslides during flash floods in an area of San Bernardino County; sixteen people perished. Most recently in November 2008, three fires in Santa Barbara, Los Angeles and Orange Counties destroyed 529 conventional homes and 478 manufactured homes in one mobilehome park.

The number of homes destroyed and the frequency of these fires is increasing. Recent serious conflagrations include the following:

- 484 homes - Los Angeles, 1961
- 325 homes – San Bernardino, 1980
- 641 homes - Santa Barbara, 1990
- 3,403 homes – Oakland, 1991

- 400 homes—Laguna Beach, 1993
- 2,232 homes—San Diego (Cedar Fire only), 2003
- 1,500 homes—Southern California, 2007
- 1,013, homes—Southern California, 2008

On September 20, 2005, the California Building Standards Commission (CBSC) approved the Office of the State Fire Marshal's (OSFM) emergency regulations (building standards) amending the California Code of Regulations (CCR), Title 24, Part 2, California Building Code (CBC), adding Chapter 7A - Materials and Construction Methods for Exterior Wildfire Exposure. These building standards were adopted in response to severe fire damage and loss of life sustained during wildfires in Southern California.

Between September 2005 and January 2008, there was neither need nor ability for HCD to impose special fire safety construction standards on manufactured homes because the U.S. Department of Housing and Urban Development (HUD) generally preempts the area of manufactured home construction standards. As discussed below, HUD changed its position, in January 2008, allowing HCD to develop and enact the same Chapter 7A standards adopted by the OSFM throughout the state for manufactured homes and concurrently, for mobilehomes, multifamily manufactured homes and commercial modulars which are subject to similar state preemptive construction codes. This serves the dual purposes of enhancing resident and home safety in fire hazard zones while maintaining a statewide standard to allow cost-effective factory construction processes statewide.

The 2008 fire season arrived with a significant threat to persons and property in urban areas near wildlands and in rural areas. In addition, State Fire Marshal mapping of specified fire hazard areas was finalized in July 2008, allowing consumers, dealers, and manufacturers to determine what areas require enhanced Chapter 7A fire standards. Without permanent HCD preemptive standards (Chapter 7A) local governments may prevent the installation of affordable and safe manufactured homes, mobilehomes, multifamily manufactured homes and commercial modulars in mobilehome parks and on private property due to a belief that they can impose their own local fire hazard rules and/or some manufactured homes and mobilehomes, multifamily homes, and commercial modulars will be installed without adequate fire protection.

Due to California's severe fire seasons, it is imperative that construction standards for new construction and alterations become permanently adopted to provide protection of manufactured homes, mobilehomes, multifamily manufactured homes and commercial modulars being installed in areas designated as Fire Hazard Severity Zones. Failure to implement these standards permanently leaves these types of structures and their occupants vulnerable to the hazard posed by wildfire. At the current time, 350 manufactured homes and 300 commercial modulars are sold and installed monthly in California, many of which are in high fire hazard zones.

The installation or alteration of a manufactured home, mobilehome, multifamily manufactured home or commercial modular without fire hazard protection not only impacts the homes' and modulars' residents and property, it can also act as a catalyst to spread a

fire from an external source to other nearby homes and property, and requires fire fighters to dilute their fire fighting activity to unnecessarily protect property without adequate fire prevention standards.

By permanently adopting the emergency regulations, statewide regulations will continue to preempt city, county, and city and county enforcement of locally-adopted Wildland-Urban Interface ordinances. Manufacturers of manufactured housing, multifamily manufactured homes, or commercial modulars will have one statewide set of standards to adhere to when constructing or altering structures. There are 58 counties and nearly 600 cities with building departments, which would mean that manufacturers may be subjected to manufacturing homes and modulars to any number of standards, instead of one state or federal standard. These businesses and associated enterprises would be severely impacted beginning February 28, 2009, if the emergency regulations do not remain in effect and are not adopted permanently, by the inability to build, sell, and lease structures which could be located in one local jurisdiction but not another. These proposed regulations would permanently standardize construction requirements.

About 350 manufactured homes and about 300 commercial modulars are sold monthly in California, based on 2007 statistics, many of which are sited in high fire hazard areas. These are financed in advance of construction and if the emergency regulations do not remain in effect and become permanent after February 28, 2009, no clear regulatory requirements will exist which may cause the attempted imposition of local requirements that will delay installation and use, leaving consumers and small businesses making monthly payments for residential and commercial products they cannot use.

The U.S. Department of Housing and Urban Development (HUD) historically has precluded state or local building standards from applying to construction or alteration on manufactured homes. In approximately August 2007, HUD formally communicated to HCD that California's adopted Wildland-Urban Interface standards could not be applied to manufactured homes since the field of "fire protection" was preempted by federally adopted standards; however, in January 2008, HUD rescinded that decision and determined that standards could be developed by California and applied to manufactured homes.

HCD was able to initiate emergency rulemaking for construction and alteration of mobilehomes, commercial modulars and multifamily manufactured homes once HUD agreed to state standards for manufactured homes. Since the same factories construct manufactured homes, multifamily manufactured homes and commercial modulars, and many of the same contractors alter these units and mobilehomes, the emergency regulations avoided a series of conflicting building standards that would have created confusion and probably construction errors in those factories and by those contractors, adopting the emergency regulations permanently will avoid any future confusion and construction errors.

Rationale for Proposed Amendments

Pursuant to Chapter 668, Statutes of 2003 (AB 1216), the California Office of the State Fire Marshal (OSFM) amended the 2007 California Building Code (CBC), Title 24, Part 2,

adding chapter 7A and providing new Wildland-Urban Interface (WUI) Fire Area building standards to establish minimum standards for exterior materials and material assemblies and provide a reasonable level of exterior wildfire exposure protection for new buildings constructed in such areas to mitigate losses resulting from California's repeating cycle of wildland fire disasters.

The addition of the WUI standards into the 2007 CBC, however, did not, for several reasons, automatically require that manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures comply with the new WUI standards, should these structures be installed either on private property or in a mobilehome park residing within a WUI Fire Area.

- Construction standards for manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures are specifically exempted from the building standards requirements of the California Building Standards Code, pursuant to California Health and Safety Code section 18909(g).
- Construction standards for most components of manufactured homes are established by HUD with a preemptive code applicable nationwide.
- Construction standards for mobilehomes, multifamily manufactured homes, and commercial modulares are established by HCD and generally preempt local ordinances.

The specific purpose of this rulemaking by HCD is to permanently adopt emergency regulations that comply with both the Legislature's intent and the OSFM's purpose to require adoption of ignition resistant regulations for all buildings or structures that are either site-constructed or installed in WUI fire areas as defined under those rules in order to foster fire safety and prevention of fire spreading to other structures. This rulemaking by HCD, in coordination with the OSFM, establishes a systematic approach to reducing structure loss in a large and destructive fire and to protect life and property in any WUI Fire Area while not interfering with the preemptive HUD or statewide standards applicable to manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular construction or alteration.

HCD proposes to permanently adopt by reference in Title 25, CCR, the OSFM building standards adopted by the CBSC in Chapter 7A and apply them to manufactured homes, mobilehomes, multifamily manufactured homes and commercial modular construction and alteration. This will provide minimum standards for the design, materials and construction methods for roofs, roof coverings, roof assemblies, attic eave and cornice vents, and exterior wall coverings for manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures built or installed in a WUI Fire Area. These construction methods are proposed in order to resist the intrusion of flame or burning embers projected by a vegetation fire on or into manufactured homes, mobilehomes, multifamily manufactured homes and commercial modular structures in the same manner as conventionally constructed structures.

The proposed regulations adopt by reference the California Building Code, Part 2, (CBC) Chapter 7A, with some exceptions. These ignition resistant construction requirements previously applied only to site-constructed buildings in a State Regulated Area (SRA) as of January 1, 2008. Effective July 1, 2008, in Local Regulated Areas (LRA), the provisions of Chapter 7A are effective and would, after local adoption by local ordinance, also include manufactured homes, mobilehomes, multifamily manufactured homes and commercial modular structures.

An ignition resistant construction system installed or added as part on an alteration as required by Chapter 7A of the CBC is designed to resist ignition from flame or embers and affords occupants early evacuation of the home or structure. It also enhances resistance to penetration of the structure by fire or embers. The adoption by reference of Chapter 7A of the CBC into Title 25 CCR regulations, as well as the requirements for Department approved third-party approval of plans and third-party inspections in the manufacturing facility, will provide HCD licensed manufacturers, dealers and contractors; owners of manufactured homes, mobilehomes, multifamily manufactured homes and commercial modulars; and local jurisdictions with reasonable assurance that ignition resistant construction systems installed in these structures will meet the minimum requirements imposed on communities by Chapter 7A, CBC.

Health and Safety Code section 18015 provides that the Department's regulations supersede the provisions of any local ordinance, and section 18030.5 exempts a manufactured home, mobilehome, multifamily manufactured home and commercial modular structure from the requirements of any local ordinance that conflicts with standards adopted by the Department. In accordance with these laws, the ignition resistant construction standards proposed by the Department will have statewide application. The preemptive nature of the standards will provide all interested parties with construction standards that maintain the integrity of the structures during construction or alteration and will provide a means of consistency throughout the state.

Summary of Sections Affected

- The specific sections of 25 CCR, Division 1, Chapter 3, Subchapter 2, to be added by this proposed action are a new Article 2.3 new sections 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4214, and 4216.

Summary of Effect of Proposed Regulatory Action

The purpose of these proposed regulations is to establish requirements for the installation of ignition resistant construction system for new construction and alteration of manufactured homes, mobilehomes, multifamily manufactured homes and commercial modulars intended to be placed in areas designated as Fire Hazard Severity Zones, including both substantive and procedural requirements, by adoption by reference the OSFM ignition resistant construction standards in Title 24, CCR, Part 2, (California Building Code), Chapter 7A.

Those sections within Title 25, California Code of Regulations, affected by this emergency rulemaking (see “Summary of Sections Affected,” above), and the specific purpose for each requirement in these proposed regulations, are described in the Initial Statement of Reasons.

► **Article 2.3 Manufactured Home, Mobilehome, Multifamily Manufactured Home and Commercial Modular Ignition Resistant Construction System.** HCD is adding the ignition resistant construction standards in a new and separate article for the ease of the public and public agencies to find the requirements and have them in one location.

► **Section 4200. Application of Design Requirements; Preemption of Local Requirements.**

Subsection (a). By the addition of this subsection, a code user and the local code enforcement agency will be notified that the Chapter 7A standards in the California Building Standards Code for conventional construction also are the standards for the design, installation, and construction or alteration of the exterior of any mobilehome, manufactured home, multifamily manufactured home, or commercial modular intended to be installed in a specified Fire Hazard Severity Zone. This allows for statewide consistency as well as understanding by local inspectors and ensures that current and subsequent owners, leasers, or renters of the manufactured homes, mobilehomes multifamily manufactured homes, and commercial modulares understand the extent of protection required.

Subsection (b). By the addition of this subsection, a code user will know that the design, construction, and installation standards in this article preempt any local ordinance or rule adopted by any other state or local agency for construction of structures in the fire hazard areas designated in subsection (a) with two specific exceptions. This ensures that there will not be conflicting standards depending on where a manufactured home, mobilehome multifamily manufactured home, or commercial modular is installed, and avoids an unnecessary burden on manufacturers or alteration contractors. In addition, Chapter 7A building standards provide enhanced protection for structures throughout the state.

Subsection (b)(1). This is the first exception to the rule that the HCD Article 2.3 standards for certain manufactured structures preempt in the state-established high fire hazard zones. By the addition of this subsection a code user and local code enforcement agency will know that the regulations not only preempt any more restrictive rules being applied to the design, construction, alteration and installation of the specified manufactured structures proposed for installation or alteration in the fire hazard areas specified in subsection (a), but also preempt by precluding additional or more restrictive protection for other locally-established fire hazard areas. This amendment is necessary because local jurisdictions commonly seek to impose more restrictive rules for their specific areas of responsibility, and this amendment clarifies the preemptive nature of the state standards in order to avoid conflicts, inconsistencies, and unnecessary additional standards.

Subsection (b)(2). By the addition of this subsection, a code user will know that the other exception to the Article 2.3 standards being preemptive, as described in

subsection (a), occurs for structures installed or altered in certain locally established moderate or low fire severity areas. In those circumstances, where less restrictive standards are enacted by local governments, manufactured homes, mobilehomes, multifamily manufactured homes and commercial modular structures may be constructed or altered to those lower or less restrictive standards established by the local enforcement agency. This is necessary to allow consumers and sellers to reduce costs where more stringent standards are not necessary.

Subsection (c). By the addition of this subsection, a code user will know that not all mobilehomes, manufactured homes, multifamily manufactured homes and commercial modular structures constructed in California require installation of an ignition resistant construction system. Instead, only those installed or intended to be installed in one of the listed fire areas on or after September 1, 2008, are subject to this article. This ensures that ignition resistant construction standards are not required for manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modulars installed in areas without high fire hazards.

Subsection (c)(1). By the addition of this subsection, a code user will know that manufactured homes intended to be installed in a specified fire hazard area that were manufactured prior to the effective date of this article (by emergency, September 1, 2008) but on or after January 1, 2006, are exempt from the requirements of these regulations if an installation permit is submitted prior to September 1, 2009, but were subject to local ordinances and the State Fire Marshall regulations until September 1, 2008. This exception is intended to give small businesses and persons that own existing, unsold manufactured homes the opportunity to either install the home as is, modify them to comply with this section, or install the homes outside a WUI Fire Area. The date of January 1, 2006, was selected because the manufactured housing industry has estimated that about 800-900 manufactured homes manufactured on or after that date are current unsold inventory on dealer lots. Beginning in late 2006, manufactured housing sales began a precipitous decline due to worsening economic conditions, and many homes constructed on or after January 1, 2006, remain unsold but were acquired by dealers in good faith. Adequate time has elapsed for the sale of homes manufactured before that date. However, even those homes must be sold as promptly as possible, either inside or outside of WUI areas. Thus, the dealers have approximately one additional year, until September 1, 2009, to sell and submit permit to install those units.

Subsection (c)(2). By the addition of this subsection, a code user will know that commercial modular structures intended to be installed in specified fire hazard areas for temporary commercial, professional or business use for less than one year are exempt from the requirements of this article, but were subject to local ordinances and the State Fire Marshal regulations until September 1, 2008. The one-year time period was established because most projects using transitory commercial modulars take one year or less (e.g., construction projects), and those commercial modulars are made available in any area in the state. The Department determined that it was not economically reasonable to require commercial modulars placed on a work site for less than one year to be fully ignition resistant since those units are moved from site to site and area to area so often. The one-

year exception is calculated to start on date of issuance of a permit to install the commercial modular structure in order to establish a uniform process, throughout the state.

Subsection (d)(1-4). By the addition of this subsection, a code user and local code enforcement agency will know that existing manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures currently installed in a fire area are exempt from the ignition resistant construction required by this article unless they already have the system; they undergo exterior replacement or repairs which may be exterior components that should be replaced by ignition-resistant materials (e.g., older glass replaced with tempered pane glass, siding replaced by ignition-resistant siding, etc.); they involve a conversion from one type of occupancy to another (e.g., change from commercial use as a commercial modular to residential use as a dormitory); or they are intended to be reinstalled at a different location within a specified fire hazard area. The code user will also learn that if exterior alterations, replacements, or repairs are performed on existing structures in specified fire areas, only the exterior coverings being altered, replaced, or repaired must comply with this article. This amendment mirrors the CBC, Chapter 7A standards for existing site-built structures, and is necessary to ensure that sellers, buyers, and manufacturers do not undertake work and costs unnecessarily.

Subsection (e). By the addition of this subsection, a code user will know that alterations made to the exterior coverings of new or existing manufactured structures located in fire hazard areas must be in accordance with this Article, if such alterations are intended to be or held out as an ignition resistant construction system. This direction is necessary so that consumers receive the benefits they bargain for and rely on, and to make misrepresentations subject to statutory penalties.

► **Section 4202. Definitions.** Within Article 2.3, HCD is proposing a definitions section to define commonly used terms relating to manufactured home, mobilehome, multifamily manufactured home, and commercial modular construction and installations within Wildland-Urban Interface (WUI) Fire Areas. All of the terms cross-reference or incorporate identical terms in the CBC Chapter 7A in order to maintain consistency statewide with regard to these standards and comply with the intent of both the Legislature and the OSFM to increase protection from wildland fires. If the State Fire Marshal believes that modifications are necessary in the future for every or any area of the state, the changes automatically will be applicable to the manufactured structures subject to this subchapter. This consistency also is necessary so that inspectors who inspect conventional construction can apply the same information to manufactured home, mobilehome, multifamily manufactured home, and commercial modular structures.

Subsection (a). By the addition of this subsection, a code user will learn that a manufactured home, multifamily manufactured home and commercial modular structure each have a date of manufacture that is recorded by the manufacturer, and placed on the unit's data plate or unit identification label. The date of manufacture will be the control date utilized by local permitting agencies for the purpose of exceptions to the article.

Subsection (b). The term "Ignition resistant construction system", as used in this

new article 2.3, is cross-referenced to the same term and standards in CBC Chapter 7A in order to enhance consistency and clarity.

Subsections (c-d). By the addition of these subsections, a code user will know that the proposed definitions are terms used to describe different geographic WUI responsibility areas. These definitions will also inform the code user that the geographic areas are the same as those applicable to other parts of the state, as adopted in CBC, Chapter 7A, and therefore the same standards that apply to conventional homes in those areas also apply to manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modulars.

► **Section 4204. Adoption by Reference of the Provisions of the California Code of Regulations, Title 24, Part 2, Chapter 7A.** Within Article 2.3, HCD is proposing to adopt by reference the standards provided by Chapter 7A, for the specified manufactured structures installed or intended for installation in WUI Fire Areas. By addition of this subsection, a code user will know that HCD is adopting Chapter 7A with certain sections exempted that are not applicable to manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modulars.

- CBC Chapter 7A, section 701A.3.1, is exempted from this new Article because existing HSC section 18016 already addresses alternate methods of construction for manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modulars to this Article.
- CBC Chapter 7A, section 701A.3.2.4, is exempted from this Article because vegetation clearance requirements are not a design, construction, or installation standard for manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modulars subject to this Article and therefore section 701A.3.2.4 is not applicable to this Article.
- CBC Chapter 7A, section 702A, “Fire Protection Plan” definition is exempted from this new Article because it does not relate to a design, construction, or installation standard for manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modulars subject to this Article and therefore section 702A is not applicable to this Article.

While the Office of Administrative Law generally questions the validity of prospective incorporations by reference (e.g., the proposed HCD regulations adopt a portion of CCR Title 24, California Building Code, as currently in effect and as amended in the future), the situation with this incorporation by reference differs from those which are the basis of OAL’s past rejections. OAL’s objections are based on issues related to the limited opportunity for public participation in the decision by the promulgating agency (e.g., HCD) because another agency creates or adopts the standards being adopted by reference. The process for adopting the proposed HCD regulations, the regulated public affected by them, and the process for adoption of Chapter 7A clearly distinguish these regulations from those which are the basis for OAL’s precedential decisions on prospective incorporation by reference.

OAL relies on decisions in *California Ass'n of Nursing Homes, Etc. v. Williams* (1970) 4 Cal.App.3d 800, 814, 84 Cal.Rptr. 590, and its internal citation, *Olive Proration etc. Com. v. Agric. etc. Com.*, 17 Cal.2d at p. 209, 109 P.2d 918. In the *Nursing Home* decision, as well as the *Olive Proration* decision, the problem was that the welfare agency was adopting regulations based on a “Schedule of Maximum Allowances” established by the Department of Finance without any hearings, any evidence, etc. and in fact were the result of “ex parte studies by staff personnel” of the Department of Finance (referred to by the court as the state agency’s adoption of “DOF’s fiat”). A similar circumstance existed in the *Olive Proration* decision, where the agency completed its hearings and then, without notice to parties, received and considered a field survey and report by the Department of Finance; the parties were not apprised that this survey was undertaken or the result of it until the commission’s orders were promulgated, depriving them of opportunity to comment and rebut.

Headnote 10 in *Nursing Homes* summarizes that there is no procedural barrier prohibiting adoption by reference if supporting evidence is made available at a public hearing, an opportunity to refute is given, pro-and-con evidence is considered, etc. In the HCD/WUI regulations, proponents and opponents will have those opportunities. Already, HCD demonstrated that it has not fully “delegated” its authority to the State Fire Marshal, since it opted to not adopt certain parts of the WUI Chapter 7A regulations. Other parts might be considered for deletion as well, depending upon comments during the public input phase. However, HCD also has made full reference to the Fire Marshal’s consideration and hearings on Chapter 7A: these were not adopted under the cover of darkness, as were the DOF “Schedule” and the DOF “Study” in the *Nursing Home* and *Olive Proration* decisions. If anything, builders participating in 90% of the residential construction in the state fully vetted those standards in public hearings.

Another example of the problem with prospective incorporation by reference cited by OAL involves the Regional Water Board and its attempted adoption of federal standards. Not only is there a question of illegal delegation to a federal agency—an issue not applicable in the HCD/WUI situation—but the ability to participate in and influence the development and adoption of federal regulations is far different than that accorded by OAL with respect to the development and promulgation of state regulations.

As to adoption by reference for future modifications, again the record here is totally different than that in *Nursing Homes*. In “*Nursing Homes*”, the reference to “the incorporated material” refers to the DOF schedules created by faceless DOF staff personnel in ex parte proceedings, resulting in the nursing home industry not having opportunity to comment, refute, etc. In the current situation, there are three striking differences:

1. Any changes in the OSFM Chapter 7A will occur with full public study, comment, and opportunity to rebut from residential builders throughout the state, as well as public agencies such as HCD. The adoption of building standards by the California Building Standards Commission is subject, in part, to the APA and

is much like the process used with OAL-processed regulations, rather than the process used for federal regulation review and adoption.

2. Knowing that Chapter 7A will provide the template standards immediately upon adoption by HCD, the manufactured housing industry can register as “interested parties” and be provided direct notice and opportunity to participate in any further CBSC consideration of the OSFM Chapter 7A, if amended.
3. The manufactured housing industry, if dissatisfied by an OSFM standard can immediately petition HCD to modify that standard from the Title 25 regulations.

In conclusion, HCD greatly respects the OAL internal regulations regarding prospective incorporation by reference and validity of future modifications in most circumstances. In the current situation, however, the rationale does not apply. Not only have the standards been vetted by the construction industry, and not only may the commenter’s comment again regarding what HCD has chosen to incorporate or not incorporate in the MH/WUI regulations, but, in the future, the Manufactured Home and Commercial Modular industry has the right to, and may merely request to, participate in the development and adoption of future WUI regulations before they become effective for conventional as well as manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular.

In addition, HCD does not believe that its adoption of Chapter 7A of the California Building Code, Title 24, Part 2, of CCR violates Sec. 20(c)(5) of Title 1, CCR. HCD does not believe that it is adopting a “document” (such as a form, study, etc.) but instead is adopting the standards in another California regulation. If this interpretation were carried to its full extent, every time an agency regulation cross-referenced even one of its own regulations such as an internal definition, (even in the same package being adopted), it would have to add a date of adoption to that internally cross-referenced regulation. (e.g., “This section is applicable to “mobilehome” as defined by section 1111 of this title, *as adopted July 1, 2006.*”) We believe that the term, “document”, as used in Sec. 20 can be and should be distinguished from “regulation”.

► **Section 4206. Sale, Rent or Lease of a Manufactured Home, Mobilehome, Multifamily Manufactured Home, or Commercial Modular.** Within Article 2.3, HCD is proposing a section that makes it unlawful to sell a manufactured structure either intended to be installed in a WUI area that is not provided with ignition resistant construction or does not comply with this article, or modify a manufactured structure’s existing ignition resistant system unless that work is in compliance with provisions of the HCD WUI standards.

Subsection (a). By the addition of this subsection, a code user will know that it is unlawful to sell specified manufactured structures intended to be installed in a WUI fire area unless the structure’s exterior complies with the requirements of this Article. This is necessary to ensure that these life- and property-saving provisions are properly implemented.

Subsection (b). By the addition of this subsection, a code user will know that any modifications, repairs or alterations to an existing ignition resistant system without

complying with the requirements of this Article are unlawful acts. This is necessary to ensure that consumers who rely on the existence of a conforming exterior fire resistant covering can continue to rely on that when alterations are made.

► **Section 4208. Requirements for the Approval of the Plans for Ignition Resistant Construction System – Design Approval.** Within Article 2.3, HCD is proposing a section governing the approval of designs for the ignition resistant construction systems on certain manufactured structures in a factory setting, and intended for installation in WUI areas. This section describes how designs are approved, by both manufactured home manufacturers that principally operate under federal (U.S. Department of Housing and Urban Development, or HUD) authority and by multifamily manufactured home and commercial modular manufacturers that operate under HCD authority.

Subsection (a). By the addition of this subsection, a code user will know that manufactured home manufacturers must use existing HUD-certified design approval agencies and HUD procedures for the approval of ignition resistant construction system designs for manufactured homes intended to be installed in a WUI area in accordance with existing federal regulations. A Primary Inspection Agency (PIA) is a term used by HUD for HUD-certified design and inspection approval agencies that are employed by manufacturers of manufactured homes. Use of the PIA and the existing federal process for design review will reduce the burden on manufacturers, since they already are involved in design review of other components of the manufactured homes. Requiring the review to include in-factory and installation site specifications and procedures is necessary because site installation can create or preserve fire intrusion areas (e.g., at the base of the unit) or because many manufactured homes are delivered in multiple sections that are assembled on-site and must be properly sealed.

Subsection (b). By the addition of this subsection, a code user will know that manufacturers of new multifamily manufactured home and commercial modular structures are under HCD authority, as opposed to the subsection (a) manufactured home that are under HUD authority, therefore they will be subject to the following subsections (b)(1), (2) and (3) for design approval of ignition resistant construction system designs for such structures intended to be installed within a WUI area. Different requirements are necessary for these types of newly-constructed structures because, by definition, they are not subject to the HUD code. “Mobilehome” structures are not included in this subsection because, by definition, they are structures built prior to June 15, 1976, (see H&SC Section 18008) and, therefore their ignition resistant construction system always is added outside a factory as an alteration (see proposed Section 4212 below).

Subsection (b)(1). By the addition of this subsection, a code user will know that multifamily manufactured home and commercial modular manufacturers must utilize an HCD-certified design approval agency for design review and approval of ignition resistant construction system designs for such structures intended to be installed within a WUI area. This is the same design approval system currently used for these structures, and therefore reduces the burden on the manufacturer.

Subsection (b)(2). By the addition of this subsection, a code user will know that the manufacturer's design approval agency must provide copies of the designs to the manufacturer for construction and installation of the construction system, clarifying procedures so that approved plans are provided to the manufacturer prior to construction. This section imposes requirements similar to those for design approval agencies provided in section 4876(c) of Title 25 CCR, Division 1, Chapter 3, Subchapter 2, Article 5 for the balance of the design of these units. This increases efficiency, reduces manufacturers' costs, and ensures that the design of the ignition resistant construction system is compatible within the design of the unit itself.

Subsection (b)(3). By the addition of this subsection, a code user will know that only Design Approval Agencies approved plans may be used for ignition resistant construction system construction. This eliminates confusion and the possibility of a manufacturer using unapproved "in-house" or "shop" drawings for such construction, and enhances consumer safety.

► **Section 4210. Requirements for the Inspection Approval of an Ignition Resistant Construction System Within a Factory.** Within Article 2.3, HCD is proposing a section for inspection approval of the construction of ignition resistant construction on manufactured structures constructed within a factory and intended for installation in WUI areas. This section describes the different procedures for inspection approval for such construction of manufactured homes constructed under HUD authority and for inspection approval for construction of multifamily manufactured homes and commercial modular structures under HCD authority.

Subsection (a). This subsection makes clear that it applies only to manufactured homes.

Subsection (a)(1). By the addition of this subsection a code user will know that manufactured home manufacturers must inspect and obtain inspection approval of the construction of ignition resistant construction systems using their existing HUD inspection agencies and using procedures imposed by HUD in 24 CFR Part 3282, Subpart E, "Manufacturer Inspection and Certification Requirements." This is necessary to reduce the burden on manufacturers and to coordinate inspections of the ignition resistant construction system within the balance of the structure.

Subsection (a)(2). By the addition of this subsection, a code user will know that manufacturers must certify that the installation of the ignition resistant construction system complies with the requirements of this article and its approved designs, pursuant to the certification label requirements of section 4214 of Title 25 CCR, Article 2.3 (proposed new section). This is necessary because the manufacturer has the ultimate responsibility to ensure that the system is installed correctly, either initially or in response to corrections identified by the inspector. This section fulfills the Chapter 7A, section 701A.3.2.2, intent to certify that such construction complies. Also, the manufacturer already has to certify to other compliance under the HUD standards.

Subsection (b). By the addition of this subsection, a code user will know how inspection approval is obtained for construction of multifamily manufactured homes and commercial modular structures, using HCD (not HUD) approved third-party agencies. These requirements are consistent with and enhance the existing inspection procedures established for these structures as provided in section 4878 of Title 25 CCR, and clarify that this new article also requires manufacturers to certify that the procedures are consistent with the certification label requirements of section 4214.

Subsection (b)(1). By the addition of this subsection, a code user will know that a manufacturer must use its existing HCD-certified quality assurance agency (QAA) to obtain inspection approval of the construction of ignition resistant construction systems. This amendment clarifies and enhances existing procedures for other parts of the units established in section 4878 of Title 25 CCR.

Subsection (b)(2). By the addition of this subsection, a code user will know that manufacturers must certify compliance of the ignition resistant construction, and document that certification, so that HCD can monitor and enforce this article. Certification labels demonstrate to state and local enforcement agencies that, by placement of the label on complying ignition resistant structures, the exterior materials comply with the provisions of this article. This is necessary because the manufacturer has the ultimate responsibility to ensure that the ignition resistant system is installed correctly, either initially or in response to corrections identified by the inspector. Also, the manufacturer already has to certify to other compliance under the HCD standards.

Subsection (c). By the addition of this subsection, a code user and enforcement agency will know that manufacturers demonstrate compliance with CBC Chapter 7A, section 701A.3.2.2, by providing a signed copy of the ignition resistant construction system certification label to the local enforcement agency at the time a permit to install the structure occurs. Certification of this type provides assurances to the local enforcement agency of compliance with Chapter 7A construction design and materials which the local agency was not able to verify during the manufacturing process in a factory or at other off-site locations and which no longer can be verified because the factory construction is concealed.

Subsection (d). By the addition of this subsection, the code user will know that monthly, all manufacturers must provide copies of the certification labels to HCD for all structures constructed with ignition resistant construction systems during the prior month. This amendment provides HCD with notification that such construction was provided and documentation of its location for HCD monitoring and follow up purposes. Requiring submittal by the fifteenth day of each month mirrors existing reporting requirements that are provided in section 4880 of Title 25 CCR, and allows time to collect and send the information.

► **Section 4212. Requirements for the Installation of an Ignition Resistant Construction System to Structures not in a Factory.** Within Article 2.3 HCD is

proposing a new section addressing the installation of ignition resistant construction systems on manufactured structures that no longer are in a factory. These procedures differ from the previous sections due to HCD's preemptive inspection authority provided by HSC 18029 for the approval of alterations to manufactured structures in the possession of owners, dealers, owner-builders, or contractors in any off-site, non-factory location if those structures will be installed or reinstalled in a WUI area.

Subsections (a-b-c). By the addition of these subsections, the code user will know that persons altering these structures must first obtain approval by submitting forms, fees and (2) sets of plans to HCD for review of the design of the alteration or modification. The code user also learns that HCD personnel are required to approve designs and inspect the installation of ignition resistant construction system alterations or modifications to existing structures. The requests for design and inspection approval must be requested using an application form provided by HCD. These procedures are used because they ensure proper design and because they are the same as those currently used for other alterations of these structures, making the process more efficient for consumers, contractors, and department staff.

Subsection (d). By the addition of this subsection, a code user will know that HCD will provide a copy of the final inspection approval of the ignition resistant construction system to the applicant requesting inspection. This written inspection approval is necessary to demonstrate compliance to the local enforcement agency having jurisdiction in the fire hazard area, prior to installation of the structure and to satisfy the requirements of Title 24, CCR, Part 2, Chapter 7A, section 701A.3.2.2.

Subsection (e). By the addition of this subsection, a code user will know that in order to verify that the ignition resistant materials and products used during construction of an ignition resistant construction system meet the requirements of Chapter 7A, the packaging and installation instructions provided by the product manufacturer are maintained for review. This amendment mirrors similar requirements referenced in Chapter 7A, section 701A.1 and Chapter 15, section 1507.2 of Title 24, CCR, Part 2, CBC. Packaging and installation instructions provide inspectors with essential information helping to identify product listing compliance and verification of product installation. Without this identification, inspectors may require removal of roofing, walls or other surfaces in order to verify product stamps, labels or certification markings adhered to the material underside or backside.

► **Section 4214.** Within Article 2.3, HCD is proposing a new section addressing contents, materials, and procedures for an ignition resistant certification label that is completed and affixed to the structure by the manufacturer or installer. A signed certification label demonstrates compliance by the manufacturer or installer that the ignition resistant construction system complies with Article 2.3. The label also provides information on the type of ignition resistant materials used by the installer or manufacturer, should these materials require verification, maintenance or replacement by the structure's owner.

Subsection (a). By the addition of this subsection, the code user will know that a certification label is required to be provided and affixed on each structure having an ignition resistant construction system installed. A certification label will provide valuable information for the owner or future owner should a need arise to repair or replace any of the special fire resistive materials installed on the exterior; to the enforcement agency as a verification that the materials are of the correct type and that they are installed and inspected as provided in this article; and for HCD complaint handling, monitoring, enforcement, and statistical use.

Subsections (a)(1-2-3-4-5-6). By the addition of these subsections, the code user will know that the certification label must be a certain format and size, and be permanently protected and secured within the structure. Information on the label provides information not only necessary during construction and installation, but for future use by the owner(s) should modifications or alterations be necessary. The information will be available for easy inspection for the life of the unit because of the prescribed materials and procedures.

Subsection (b). By the addition of this subsection, the code user will know that the certification label must closely follow the example provided by HCD following this subsection. Wording provided on the label restates requirements contained within Article 2.3 in a manner that the structure's owner, manufacturer, installer, and enforcing agency can understand.

The name, address of the installer/manufacturer, design and inspection approval agency; the structure's serial number, and the date of installation is information valuable to HCD should HCD monitor finished construction or receives a complaint that the construction or materials used may not comply with the regulations.

The instructions provide critical material and information. The prohibition against removal or covering the certification ensure that it always can be found and used as a reference by a homeowner, enforcement agency, or future contractor. The reference to Article 2.3 and Chapter 7A provide guidance for material, installation, and inspection requirements.

The prohibition related to alterations summarizes Article 2.3 requirements to ensure that alterations are properly performed, including proper materials, methods, permits and inspections. The limitation for those making alterations or repairs to B (general) or C-47 (manufactured housing) contractor licenses follows current standards for work on manufactured structures and promotes correct work by trained contractors.

The warning that additions of garages and other exterior features may adversely affect the ignition resistant system is a reminder that the ignition resistant system seals the home from embers and fires, and that altering or adding exterior features "breaks" the seal. A source of information is provided so that consumers, manufacturers and installers will not mistakenly seek assistance from local agencies whose work involves conventionally-constructed homes, rather than from HCD under the preemptive state regulations.

The signature, name, date, and location of signature provide a resource for the consumer, a paper trail for HCD and local enforcement agencies, and a reminder to manufacturers and/or installers of their responsibility under this Article.

The lower sections of the label that require installer to provide the type of exterior siding, doors, windows, and roofing materials used in the construction is necessary for HCD monitoring purposes and is also valuable to the structure's owner should any repairs or modifications be made to the exterior.

► **Section 4216. Maintenance, Repairs and Alterations, Material Identification.**
Within Article 2.3, HCD is proposing a new section addressing the requirements for alteration, repair or replacement of an existing ignition resistant construction system.

Subsection (a). By the addition of this subsection, a code user and enforcing agency will know the requirements for alteration, repair, or replacement in kind of the ignition resistant construction system must be in accordance with Article 2.3. This subsection reinforces the need for such construction to continue to be effective over the life of structures installed within a fire hazard severity zone, protecting property and providing life safety.

Subsections (b)(1-2-3). By the addition of this subsection, a code user and enforcing agency will know how HCD defines an alteration of an ignition resistant construction system requiring permit approval, as opposed to maintenance or repair. This is necessary to ensure that proper standards are applied and proper permits are obtained.

Subsection (c). This subsection requires that work on a manufactured unit's exterior fire resistant system be performed by a B (general) or C-47 (manufactured home specialty) licensee of Contractors State Licensing Board. These licensees are expected by virtue of their license to have the unique knowledge of how to perform work on manufactured units.

Subsection (d). By the addition of this subsection, a code user and enforcement agency will know that alterations to existing ignition resistant construction systems require HCD plan and inspection approval involving specific procedures.

Subsection (d)(1). By the addition of this subsection, the code user and enforcement agency will know that the plan review and inspection approval process of ignition resistant construction alterations includes submission of a specified HCD form and payment of fees, which are procedures similar to electrical, mechanical, plumbing, or structural alterations of manufactured structures as required by HSC Section 18029. This is necessary to establish a specific permit review process.

Subsection (d)(2). By the addition of this subsection, the code user will know that the person(s) altering the ignition resistant construction system must obtain and pass inspection, which is the same as is required for fire safety, electrical, mechanical, plumbing, and structural alterations for other manufactured structures as required by HSC Section

18029. This is necessary to promote workmanlike repairs or alterations and health and safety.

Subsection (d)(3). By the addition of this subsection, a code user will know that in order to verify that the ignition resistant materials and products used during construction of an ignition resistant construction system meet the requirements of Title 24, CCR, Part 2, Chapter 7A, the original packaging and installation instructions provided by the product manufacturer must be maintained for review. This amendment mirrors similar requirements referenced in Chapter 7A, section 701A.1 and Title 24, Part 2, Chapter 15, section 1507.2. Original packaging and installation instructions provide inspectors with essential information helping to identify product listing compliance and verification of product installation. Without such identification, inspectors may require the removal of walls or materials in order to verify product stamps, labels or certification markings adhered to the material underside or backside.

POLICY STATEMENT OVERVIEW

The Manufactured Housing Programs within HCD is responsible for adopting and enforcing preemptive state regulations for the construction, alteration, conversion, sale, rent or lease of manufactured homes, mobilehomes, multifamily manufactured homes, commercial modulars and special purpose commercial modulars within California. HCD's mission includes promoting both safety and affordability of housing and related structures in California.

HCD is proposing to adopt permanent regulations relating to the Manufactured Housing Act of 1980, sections 18000 through 18153 to incorporate the ignition resistant standards in Title 24, CCR, Part 2 (California Building Code), Chapter 7A.

SMALL BUSINESS IMPACT STATEMENT

Small businesses will be affected by these regulations. (See "Cost Impact on Representative Private Person or Business" paragraph, below.)

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Significant effect on housing costs: SOME.

BUSINESS IMPACTS

HCD has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. However, there exists the need to adopt these regulations to alleviate a potential adverse economic impact on business, should businesses manufacture structures for use in California without a consistent set of requirements applicable statewide.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

There will be some additional cost impact to manufacturers of new manufactured homes, multifamily manufactured homes and commercial modular structures in the form of cost associated with specific materials and installations necessary to comply with ignition resistant construction. Cost estimates received from manufacturers of new manufactured homes revealed that the labor and material costs of construction in compliance with these regulations will add approximately \$1,000 - \$2,000 to the manufacturing costs of new manufactured homes intended to be installed in a designated fire hazard area. Since all structures are not required to comply with these proposed regulations, but only structures installed in locations subject to severe fire hazards, associated costs are minimal. Owners of existing manufactured homes, mobilehomes, multifamily manufactured homes or commercial modular structures, also will have some cost impact when intending to install or alter the structure in a Fire Hazard Severity Zone as the structure will be required to be altered to resist fire and fire embers. Permits and inspections would be required. It should be noted that all these costs are similar to the costs attributable to new conventional home construction or home alterations in the same fire hazard areas. Thus, it is the geographic location of the structure, not these regulations, which triggers the added costs. HCD estimates obtained from two dealers specializing in the purchase and resale of used mobilehomes and manufactured homes indicates that the costs associated with the alteration and repair of an existing structure may add \$10,000 - \$15,000 in material and labor to the cost of the used home.

HCD's data reveals that in 2007, there were 2,701 used mobilehomes and manufactured homes sold in California that were relocated to a new site, of those approximately 642 involved transactions by licensed mobilehome dealers. Such sales represented 23% of the total number of new and used manufactured homes and mobilehomes sold in California. It is not known how many of those relocated homes were installed in a designated fire hazard area.

The increased costs of the ignition resistant construction systems are likely to be partially offset over time by reduced annual fire insurance costs as well as reduced likelihood of catastrophic damage, destruction, or personal injuries in the event of a wildland fire.

HCD is not aware of any other cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments serve to improve fire resistive construction to help ensure the occupants and structures survive a wildfire.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

HCD has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California. Due to the low number of relocated used homes sold through a dealer, HCD has determined that the impact on most dealers will not be significant and should not result in the elimination of existing businesses.

However, HCD is unaware of the number of dealers who specialize primarily, in sales of used homes in designated fire areas. The effect on these dealers could be significant if potential buyers chose not to purchase or relocate a used home due to the costs to retrofit.

CONSIDERATION OF ALTERNATIVES

Throughout the development of this proposed rulemaking, HCD must determine that no alternative will be more effective in carrying out the purpose for which the action is proposed or that no alternative will be as effective as and less burdensome to affected private persons than the proposed action.

During the development of this rulemaking, the following alternatives were determined not to be acceptable and were rejected:

- New Performance-Based Requirements for Ignition Resistant Construction Systems
Performance based standards, while worthy of consideration, were found not to be acceptable because they may not be equivalent to the prescriptive requirements provided in Chapter 7A, causing resistance from local building, planning and fire marshal offices, and, as such, do not meet the objective of providing uniform standards. They also might be unnecessarily more expensive for businesses and consumers.
- Not Establishing Preemptive Statewide Standards
Not establishing preemptive statewide standards, and leaving standards to local jurisdictions, would have significant cost impacts on manufacturers and consumers because of the disruption of the factory-line production system and because unnecessarily rigorous standards could be imposed to provide extreme fire protection. This alternative did not meet the department standard of promoting both safe and affordable housing.

STUDIES, REPORTS, AND SIMILAR DOCUMENTS

HCD has relied upon the following sources of information when developing the proposed regulations:

- ▶ California Code of Regulations, Title 24, Part 2, Chapter 7A, Materials And Construction Methods for Exterior Wildlife Exposure.
- ▶ California Department of Forestry and Fire Protection web site
<http://www.fire.ca.gov/fire>. Frequently Asked Questions
- ▶ California Department of Forestry and Fire Protection web site
<http://www.fire.ca.gov/fire>. Wildland-Urban Interface Building Codes

► Letter from William W. Matchneer III, Associate Deputy Assistant Secretary, and Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, to Richard Weinert, Codes and Standards Administrator II, Department of Housing and Community Development, Division of Codes and Standards, January 31, 2008.